

Municipal Council Minutes
Tuesday, April 11, 2006
7:00PM Town Hall Auditorium

Call to Order 7:00PM

Pledge of Allegiance – Councilor Lindstrom

Roll Call: Robert Lavoie, Alison Lindstrom, Donna McClure, Mario Pinierio, Michelle Thone, Roger Benson, Hank Brennick, Ann Connolly King, Christopher Lawrence

Accept Minutes – February 14, 2006 & March 14, 2006

Councilor Brennick asks for the following corrections: March 14, 2006 page 4, fourth paragraph, second sentence; should read “a well trained person”. Last paragraph, third line should read “that union”. Councilor Benson motions to accept the minutes with the corrections, Councilor Pinierio seconded – Voted Unanimous

Public Comment

Mayor Kezer - Veto of 2006-007

Mayor Kezer outlines his veto message delivered to the Municipal Council (copy attached). In addition Mayor Kezer stated the following: One of the major concerns is shifting the burden from the state to the Town of Amesbury for overseeing matters such as health insurance and workers compensation. We do not have the staff or expertise to administer or enforce those requirements. Those are currently enforced by the Attorney Generals Office. They have the expertise and means in which to investigate those laws. I do not want to see a shift of that burden to the town. I know there have been complaints of the timeliness of the enforcement and the ability of the Attorney Generals Office to enforce but again, it is not within our means both in expertise and I would not want to spend our legal budget to go after contractors on those cases; they should be referred to the Attorney Generals office. The other major concern, in addition to the administrative requirements and all the additional requirements that contractors and sub contractors have filing certain paper works and certifications is that, a violation of any of these provisions can make contractors liable for a penalty of up to 5% of the costs of the projects. If a subcontractor violates a provision in the contract, according to the ordinance, he can be held liable for that penalty. Using the High School project as an example, a \$30,000,000 project, if a subcontractor does not meet the criteria the subcontractor can be fined up to \$1.5 million. Any contractor looking to bid in Amesbury will not bid in Amesbury and expose themselves to those types of penalties. I know it is discretionary for the town, the fact that we can, is going to scare away a lot of bidders. The whole reason of Chapter 149 and 3039M and Chapter 7 for Design and Selections, and Chapter 30B for goods and services is you want as much competition on bidders as possible in order to have price competition. I believe that penalty alone will scare away most contractors who will take their business to other cities and towns. Prevailing wage law which is in this provision is already required under state law. The other issue I have heard is undocumented employees or 1099 employees, again Chapter 193 Acts of 2004 strengthened the law in regard to the definition of employees, it addresses all these issues with a penalty to any contractor or subcontractors who violate those provisions from disbarment to being able to do business with the state or cities and towns if they violate those provisions. It is managed by the Division of Capital Asset Management (DECAM) which is the overseer of all construction projects both state and local. They have the expertise, staffing and the ability to review contractors and subcontractors. They look at their financials, work records and the responses by cities and towns that we are required by law to send to DECAM at the completion of every project. DECAM scores the quality of the contractors and subcontractors which the cities and towns are able to use to determine eligible bidders. My main point being, there is a mechanism in place to address all the issues in this ordinance. The most important point about this issue goes back to my campaign promise of needing to control costs. I have heard

many taxpayers come up to the microphone asking “Why does it cost so much to run local government or why do my taxes keep going up?” The answer is over time both through state mandates and sometimes through self imposed ordinances such as this, we have just added additional requirements and additional costs on to the taxpayers, all for good causes but, over time it just keeps adding to the costs of doing business as a municipality. We have to stop doing that. We have to make sure that if our objective is quality construction, there is a mechanism, and we want as many bidders to hold cost the mechanism is in place we don’t need to be adding additional mechanisms that provide additional costs to the taxpayers of Amesbury. If you override this veto, the next time someone asks the questions, why have our taxes gone up so high, why the cost of running municipal government is so high; you can point to this vote this night and this is the reason why the cost of municipal government keeps going up. I ask you to sustain my veto on this ordinance and let us do our job of providing quality construction at the lowest possible cost possible to the taxpayers of Amesbury.

Mayor Kezer remand 2006-008

Mayor Kezer outlines his remand delivered to the Municipal Council (copy attached).

James Thieverge, 11 ½ Sanborn Ter. – Mr. Thieverge outlined 5 budget savers to control expenses, the tax rate and the taxpayers total tax (copy attached).

Mike Greaney, Orchard Street – Mr. Greaney states he is not bashing union help and did in fact employ union workers during his career. He does not believe that union workers feel the same way about non union workers. Mr. Greaney does not believe that union contractors are the only ones to provide a safe work place and good quality work. He goes on to describe several incidents at the Middle School project where union work was less than satisfactory. With respect to non union contractors he states they take their own savings and invest in a business they will support with their intelligence in respect to contracting. They invest in their own capability. He feels there are many private contractors around that are very good. President Lawrence asks Mr. Greaney to close his remarks. Mr. Greaney asks that the 3 minute rule be suspended until he gets his point across. In regard to the mandate that was handed out by President Lawrence said to be written by a union employee he takes exception to it. He feels without it signed by the author it was worthless. With respect to the high school project there are union and non-union contractors. There are problems at the project. Silt is running into the park pond. He feels when people come in with the attitude that the only people that can do work properly is the union personnel; he does not think they know what they are talking about. He has worked with both. When people invest their own money to start a business and are questioned as in the mandate written by a union employee it is going over board. He is exasperated about the situation and wants to know who the person was that wrote the line items that the town is supposed to live to and the whole agenda. Mr. Greaney wants to know if President Lawrence wrote it. President Lawrence states that the council will respond on the next agenda item.

Chris Hyde, 17 Acadia, Kimball Rd – Mr. Hyde came to speak about 2006-011, the ordinance that requires the Mayor’s office and the CFO to provide financial analysis for proposed measures. He would suggest that if the council is going to make that a standard for the Mayor the council should be held to the same standard. A clause in the bill quotes “for measures proposed by persons other than the Mayor the CFO shall provide such a financial analysis for all members of the municipal council as soon as practical and at least one week before the public hearing on the measure”. As far as he can tell persons other than the Mayor would include Municipal Councilors. He has seen with this council

where councilors have not provided financial analysis to justify their agenda. One example is 2006-006 An Ordinance to Ensure Access to Public Documents. There is quite a lot involved in that bill and the sponsors have not demonstrated how it would be paid for, how much it would cost and what financial analysis applies to it. Second, 2006-009 Tourism Promotion Fund, it sets up a full time position and diverts approximately \$70,000 from the local occupancy tax. He feels it could be used to pay for two teachers. He does not know why the town needs to set up a tourism fund and a full time position. He does not think this was justified through financial analysis. Finally, 2006-007 which the Mayor has vetoed; he does not feel the council did its due diligence on 2006-007. They did not provide any financial analysis to the tax payers as to why this is a good idea. He queried Councilor McClure several weeks ago about that she told him she would take that into consideration and added "in order to steer clear of any open meeting violation, deliberations regarding issues before the council need to be discussed in a public forum and not by e-mail". He thought open meeting law meant interaction among councilor and nothing to do with councilor's interaction with a citizen. He suggested that examples of open meeting violations might include a quorum of councilors meeting or corresponding in private, transmission by councilors by e-mail, or draft legislation not provided to the clerk, sharing of documents or draft legislation via jump drives and not disclosing that to the clerk. He states Councilor McClure told him she had lengthy discussions with an attorney with the DA's office in Salem, an expert in open meeting laws and that she was going to take her lead from him. Mr. Hyde did contacted Tom Donovan, Assistant District Atty. He shared the legislation with him and his response was "the open meeting law would not prevent a governmental body member from discussing a matter that is the business of the body with a constituent by e-mail or otherwise so as long as there is not other body members involved in the discussion or communication such a number as to establish a quorum of the body". He asks Councilor McClure; that if it was just himself of any other constituent that she does not agree with that if they have a question for her, not to hide behind something like that. President Lawrence asks Mr. Hyde to address the whole council and not a specific councilor in the future.

Robert Smith, 4 Lake Ave. – Mr. Smith states he is a union carpenter and does not want to make this a union problem or non-union tonight. He wants to speak to the work force the building trades employ around the nation and the state of Mass. They all have an apprenticeship program in place for education for the workers. That is for safety and for any building projects whether in the town or in the state of Mass. He has done 7 good size projects in Boston. He has been involved with skilled labor all his life; there is nothing better than skilled labor. There apprentice program goes 4 to 5 years just like going to college. He tells the council that they need educated workers to do the projects in town, they will do them safe.

James Thieverge, 11 ½ Sanborn Ter – Mr. Thieverge has been a union steward, grew up a carpenters son. He feels this bill is geared more towards bigger cities not Amesbury. We have more cost considerations in town. If this bill would cost the high school more money overall, then vote accordingly. This bill has to be looked at in the context of the community. Oversight needs to be addressed to bring the project in on time and on cost. Vote appropriately.

Jane Snow, 44 Fern Ave. – Ms. Snow states that the agenda for tonight's meeting was not on line to view. She was not able to look anything up because a lot of times the councilors refer to Rule such and such and it gave no one a chance to look it up. She also notes that the meeting about the Town Clerk's job was not posted on the calendar. She asks that the council address that so people know when there are meetings so they can attend and listen and learn and ask questions and also that agenda get out in a timely fashion so that if you do have something you have the opportunity to get to

the clerk's office. I hope it would be the Thursday before a council meeting in order to be able to make it to the clerk's office.

Council Response to Public Comment

Councilor Benson response to the Mayor's veto 2006-007 – I think this is a good bill and disagree with Mayor Kezer and a lot of his reasons for the vetoing it. I feel with some relatively minor tweaking this bill could be made to work for Amesbury. I think it would help to ensure a certain quality of life for people to work on public construction in town. It would also ensure a certain quality level to that construction. That being said; the public is against it overwhelmingly. I have received a lot of feed back on this, more than most issues we take up, e-mails, phone calls and everything. People are against this. This afternoon I got to my mail box and because I have received so many e-mail on this, Bob Gonthier had to mail me the e-mail he sent because my mail box was full. This is also the first time since I have been sitting here to have Bob and Claude agree on something. I think in terms of public opinion on this it is almost without exception against it. I am going to vote the will of the public and sustain the veto. I do think it is a good bill.

On Zero Based budgeting, I won't be voting to sustain on that. I see the last section on 5-2, the first paragraph reads "the proposed operating budget shall provide a complete fiscal plan of all town funds and activities and shall be in the form the Mayor deems desirable" The word "form" is where the bulk of the disagreement on this issue is coming from. I see that word "form" as what the budget looks like. Zero based budgeting is not a form, it is a process and I hope it is not treated as a form because it is a lot more than that. I believe the council has some authority in that area and I will not be voting to sustain that veto.

Councilor Lindstrom states: I have comments on 2006-007. I agree with Roger, I believe currently the problem we have is that we are policing state law. We have no recourse for our selves when we find violators of these laws which the state is forcing us to utilize. Prevailing wage laws, health insurance is included already in the prevailing wage law the way I see it is if we hire a contractor who we are paying to give their workers health benefits, the workers should be receiving the health benefits or the equivalent there of. I agree with Roger there has been a lot of controversy so I will vote to sustain the veto. On 2006-008 I disagree with the Mayor. I believe the executive powers of the Mayor clearly give him the ability to enforce the laws that the legislative body creates. The general powers and duties of the town are vested in the council. Section 5-2 on page 13 says the Mayor may deem the form that the budget is in, I agree with Roger the form is not a process, which is what creating a budget is. On page 15 Sec. 61 A1 where both the council and the Mayor may create any department or committee that it deems necessary to run the government and it may prescribe the functions and the administrative procedures to be followed. We do it by ordinance and it goes before the Mayor for a veto, the Mayor does it by executive order and he comes before us for our approval. I will not be voting to sustain his remand. I would also like to say that hopefully when we get to the public documents 2006-006 there should be no costs. Everything is already in place to have this take affect and I think that will help Jane Snow with her problem. There is no position in the tourism fund 009 and it was suggested by the Fin Com that only 50% of the tax would go into it with oversight by the council.

Councilor King states: I would like to speak in support of the Mayor remanding back the zero based budgeting issue. I agree with the Mayor, I agree that the intent of the charter is for the Mayor to have the choice and the form speaks to the type of budget he wants to put in not on what kind of paper it is written. To be perfectly honest I find that absurd. Another argument I find that supports the Mayor's

position is that when you look at when the town looked into choosing the form of government there are two forms of government. There is a Mayoral form with a Municipal Council and then there is a town manger form of government with a Municipal Council. We chose a strong Mayoral position with the Municipal Council. Reading briefly from the charter bottom of page iii "Explanation of the major differences of between the current structure and **proposed** titled executive branch. The Mayor shall be responsible for the daily operation and business of town government. The commission believes that Amesbury is a complicated corporation which requires management, administration by an individual responsible to and directly elected by the voters". The charter commission at that time chose a Mayor and a Municipal Council. They had the option of choosing a Town Manager and a Municipal Council. If they had chosen that option it would mean that the municipal council hired the Town Manager. It would mean that the municipal council had the authority to tell the Town Manager how to do the budget. Essentially how to run the government. The town did not choose that form of government. I believe the intent was to put a Mayor in place, to have the Mayor have the responsibility to run the town and be responsible directly to the voters.

Councilor Thone states: I have a lot to say. I will start with 2006-007 Regulating Bidding on Construction Project. I want to comment first on the letter that was sent from the Mayor and also the comments that he made at the podium. In this letter there are 5 mentions of union, 5 mentions of union. The paper has labeled this as a union bill however; at the podium I did not hear one mention of union as far as your reasons for not wanting this bill. I think that that label and this letter has put fear in people that there are going to be cost increases because it is union based. Fear of favor for unions and ah creating an uneven playing field which were words that you used in your letter Mr. Mayor. I don't agree that this is a union bill and I too have received a lot a e-mails and a few phone calls and the first question that I would ask people that claim to be opposed to the is, have they read it? I think with the exception of one, no one has really read this bill. Their information was garnered through the rumor mill or the newspaper who, for the first two articles that they printed on this matter misrepresented the facts of the final version of this bill. I think the big problem most people are having is with regard to the apprenticeship program and that is why they are possibly seeing this as a union bill but, the apprenticeship program is not an option if this is a public construction project subject to the prevailing wage law. If there are apprentices on the job it is required it is not an option this is not something that this bill is adding as an extra requirement. I don't believe that the bill adds any extra requirements that would reduce the pool of bidders. We have got letters from four other communities who have similar legislation, they say they have made a wise decision by implementing it and that it has not resulted in any noticeable change in project cost. This does gives Amesbury the authority to enforce particular violations instead of waiting for the state. There was also a comment that there was a shift of burden in overseeing health benefits etc., I don't see that in this bill and the violation fines, they are at the discretion of the town as to whether or not they want to impose those. I think that is it, I will not really state at this point if I am going to sustain this veto or not. I do want to talk on the remand with regard to zero based budgeting. It is my understanding that the Mayor has two options to veto or to approve not remand so I'm not sure how that is going to be handled but the comment was that he sent it back for correction. I think if there is a correction that it should have been submitted as legislation. And I would like to speak as to why he sent this back; I think the overwhelming comment was that we did not have the authority to do this legislation. If you look at 6.1 Administrative Organization in the charter, "The municipal council may by ordinance recognize, consolidate, create, merge, divide or abolish any town department or agency in whole or in part, establish such new town agencies as deemed necessary or advisable and can prescribe the functions and the administrative procedures to be followed by all such agencies". Under that, the Mayor has the same power however; administrative orders made by the Mayor shall become effective on the 30th day following the day on

which notice of the proposed order is filed with the municipal council unless the council within such period, by a majority of the full council, vote to reject such administrative order. Which means the council has the authority to create items like this zero based budgeting and so does the Mayor but it has to be approved by the council in order for the Mayor to do the same thing. If you then go to page 1 section 1-3 Division of Powers the administration of or the action of administering all fiscal business and municipal affairs shall be vested in the executive branch under the Mayor. The municipal council prescribes and the Mayor follows. That is how I interpret the charter. I believe we are fully in our authority to mandate zero based budgeting. I'm glad to know the Mayor embraces the concept as he writes in his letter because it is now an ordinance. The taxpayers deserve this accountability and that is it.

Councilor McClure states: I would like to direct everyone's attention to page 5 of the charter, Section 3-3, except as otherwise provided by law or by this charter all powers of the town shall be vested in the municipal council that shall provide for their exercise and for their performance of all duties and obligations imposed on the town by law. This is our job. I think zero based budgeting, as Councilor Thone said, is a great thing for Amesbury. I think the Mayor has embraced the theory. I'm not quite sure why it was sent back in a fashion that doesn't exist in the charter. It is vetoed or it is approved. I am solidly behind zero based budgeting and that is the way I will vote on this. With regards to a question by a constituent earlier on a piece of legislation that I have submitted. Number one, selectively picking a response from the DA's office to fit a scenario is not appropriate. If you had read the whole letter which was a full page you would read that serial e-mails can become a quorum. I have chosen to err on the side of being safe. If you would like to read the whole thing into the record that would be ok with me too. The bottom half of the response from the DA's office is that serial e-mails can become a quorum. With regards to my bill also, the CFO has the responsibility to the town to do the analysis. Before I presented this I sat down with Mike Basque and asked him if he had an issue with any of the requirements in the bill. I asked him two things actually. If he had a problem with the way it was written or if he had a need to add more staff, would there be additional costs to perform the analysis that would be required. He said no, he had no problem with the way it was written nor would it cost any more money. I guess I believe the CFO's responsibility is to do financial analysis. I don't believe the town should accept analysis that I provide, using my numbers. I am sure Mr. Basque would want to sit down and go through it anyway. I don't think Mr. Basque's job is to carry water for the council but, I do believe it is to keep the town safe from any financial harm. I hope if you would like to come back when we re-present this maybe Mr. Basque could be here, he did embrace that bill.

Councilor Lavoie states: On 2006-007, I said at ordinance when it came up I don't think that Amesbury is in the same league as the large cities where this has been adopted. I just don't think it is a luxury that we as a town can afford at this time. On 2006-008 in terms of zero based budgeting just on a point of language on section 2.8 - when I first heard it was a remand I thought what is a remand? Remand is really just reconsideration.

President Lawrence states: As sponsor of both 2006-007 and 2006-008 I do have a few comments. First, I would like to thank councilors Thone and McClure for clearly stating the rule of the municipal council. Regards to 2006-007 I feel that this bill sets minimal requirements for all contractors and sub-contractors bidding of tax payer funded construction projects in Amesbury. We should make sure that these construction projects are built by responsible employees. This is not a union bill. I don't feel that this ordinance will scare away any reputable contractors. I'm sure there will be plenty of others out there to respond. What it is doing is it is giving Amesbury more control over how our tax dollars are

spent. Again the apprenticeship program as mentioned earlier is at the discretion of the town. This ordinance will not result in higher labor costs. Prevailing wage law is in effect. It will make sure proper wages are getting to every last worker on the site. In regards to zero based budgeting this has been around here for a couple of years. I think it is something that we need to do. We absolutely have to move forward zero based budgeting. It is time we took control of spending and knew where the money is being spent and zero based budgeting will help us. Before we proceed I would also like to mention that the Mayor has two options to veto – well two or three option, veto, accept or return with objections. Remand is not an option. There is no need for the council to take any action on these measures as they were filed after the close of business on March 27th and thus beyond the 10 day window in which the Mayor is required to act. Therefore they have both become law due to the Mayors failure to timely file his objections. Furthermore, 2006-008 was not vetoed as the Mayor chose to remand it. Pursuant to the charter the Mayor can either sign or oppose measures approved by the council. Again, remand is not a valid option. Thus, as the Mayor failed to actually veto 2006-008 it has already been adopted and is the law. In addition to the fact that it was late filed.

Councilor Benson – I agree that it was after the close of business I think the time stamp is 4:11PM but, I don't know if that is the wisest course at this point and I would ask that we at least take a vote on these, treat them as veto's and – things are getting a little wacky here and I just want to make sure we do it right. I question the rule of the chair if that is how you do it and ask that we take a vote on whether or not to vote on these two measures.

Councilor Lavoie – Point of information. What are the hours of the Town Clerk's office?

Bonnijo Kitchin – Eight to four Monday – Thursday, five to eight Thursday evening and Friday eight to noon.

Councilor King – I just want to make sure I understand this clearly. Are you saying that you are not going to accept this because it was filed 11 minutes late?

President Lawrence – Close of business day 4 o'clock yes.

Councilor King – Is there any reason why you waited until this moment and didn't address this with the Mayor?

President Lawrence – That's up to my discretion. Councilor Benson you have a motion?

Councilor Benson – I am going to ask that we... I don't know how to word this I know we have done it before.

President Lawrence – It is in the charter, you have to word it exact. It is in council rules actually.

Councilor Benson – Well then I'm going to move that we take a five minute recess so that I can find that rule. Councilor Lavoie second. 8:15PM

President Lawrence – I know Councilor Benson has a motion but before we move forward with that, however this ends up, I just would like to remind the Mayor and the Town Clerk that time is of the essence of all the documents and we do have regular... we do have, in my opinion in the town

charter when these documents are due back and end of business day is end of business day 4 o'clock here in Amesbury.

Councilor Benson – I am going to move that we use Rule 6G for the following motion – Shall the decision of the chair in regard to the Mayor's veto's stand as the judgment of the council.

Councilor Lavoie second

Roll Call Vote: 1 Yes, 8 No (Lavoie, Lindstrom, McClure, Pinierio, Thone, Benson, Brennick, King)

Councilor Lavoie – I would move on 2006-007 the ordinance regulating bidding on public construction projects. As I understand how section 2.8 in the charter reads how we are to do this, we are basically to vote whether to again pass the measure. I would frame my motion as to re-adopt 2006-007. In order for the council to overrule the veto of the Mayor the council has to vote to whether or not to pass the measure again. My only purpose in framing the motion... that I move that the council pass again ordinance 2006-007. Councilor Benson second.

Roll Call Vote: 1 Yes, 8 No (Lavoie, Lindstrom, McClure, Pinierio, Thone, Benson, Brennick, King)

Councilor Benson – moves to adopt 2006-008, Councilor Brennick second

President Lawrence – Councilor Pinierio we are voting on these items again, an ordinance to amend Article 7 - incorporate zero based budgeting.

Roll Call Vote – 7 Yes, 2 No (King, Lavoie)

President Lawrence – For the record 2006-007 did not pass, I just want to make that comment.

2006-042 – Dog Complaint – John & Ann Perkins

President Lawrence – Reads 2006-042 into the record. Bonni, the e-mail I sent you talked about this being a legal hearing. Have you done that in the past, do we swear in....

Bonnijo Kitchin – We did one time before when there were Attorneys on both sides here.

President Lawrence – Do we have to swear in the...Councilor Lavoie do you have a thought on that.

Councilor Lavoie – Technically under the dog complaint ordinance we do need to swear in anybody that is going to provide testimony on this complaint whether in favor or against.

President Lawrence – Just to tell you what is before us, we have a dog complaint and some information will be presented to us this evening so we are going to ask that all parties that are going to speak be sworn in to tell the truth. This is a very serious issue. We have to look at all sides and listen to the story. There are different actions the council can take on this; that we have seen in the past. We have documentation here but we can move forward and start with Eileen Green.

Councilor Lindstrom – I should make a disclosure. I know the family, my daughter was really good friends with one of the daughters, my other daughter grew up with the other daughter and I know the dogs and cats. I will abstain.

President Lawrence – Everyone who will be speaking on the dog complaint if you want to stand the Clerk will swear you in, an oath. This is a hearing.

Bonnijo Kitchin – All stand and raise your right hand and repeat after me. I do solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you god.

Eileen Green, Animal Control Officer – Here regarding a complaint made by Frederick Hayes on January 23rd regarding his cat that was killed by two dogs on that evening. His neighbor heard the dogs killing the cat and she went out and witnessed two huskies killing the cat. This occurred around 6:00 o'clock that evening on January 23rd. The neighbor is not here to tell us her story but, she did call Mr. Hayes and they did find the cat and the dogs. He also witnessed the two dogs in his yard and they had just maimed and killed his cat. His cat was 14 years old and Mr. Hayes was visibly upset by the time I got to meet with him. His son Peter also made phone calls to me regarding the incident. What occurred that night also at 5:30PM the police received a report from Ann and John Perkins that their two huskies were missing that same evening. Their dogs have been missing before. We have been out on several occasions and have reports that we have been by with their dogs and they have paid the fees. It has been kind of an on going issue. My complaint here tonight is that the parties that own the dogs have not shown responsibility for these two dogs, keeping them fully enclosed, keeping the public safe at this time. We have an incident that goes back to 2000 of a neighbor who witnessed these dogs also doing quite a bit of damage to her cat. Her cat was hospitalized and the Perkins did own that their dogs were involved in the incident of that cat and they did pay the retribution regarding the hospital fees and expenses. I have talked to both parties and my concern tonight is that these dogs have been habitually loose on occasions. The police have been called out and I have been called out regarding them. They have been impounded and released and received their fines. I do want to say that I have had the phone calls come from the owners, they have shown more responsibility about the dogs when they haven't run loose, when they do get loose they call immediately to the police department and to myself to give them some help in retrieving them again. With this now I am recommending that we do put these dogs under the vicious dog law. I did quarantine both those dogs during these incidents for 10 days to be sure that while they were running at large they did not incur any type of disease like rabies that would harm the public in the future. We did quarantine these dogs, violation were given to the Perkins that they have agreed to pay. Both dogs have been licensed as of today. Both are up to date on their rabies vaccine as of today. My recommendation is, and after talking to the Perkins, that they do follow through with spending the time starting this weekend, securing the fence line around their home, securing and managing these dogs following the vicious dog laws meaning that they will be muzzled in public, they are surrounded by a 6 foot fence be it stockade or chain link all they way around the property. That they do secure the dogs on a 3 foot leash while being hand walked in public and that there are also beware of dogs signs posted around their property visible to the public so the public is aware that there are dogs in there that have caused physical harm and have killed and maimed. I want to prevent this from ever happening again. I realize that to the Perkins that these dogs are their family dogs. I've taken these dogs into custody, with people there fine. Obviously, we have had two incidents with killing small animals. They are agreeing to following through with the vicious dog bylaw. I talked with Mr. Hayes and his son Peter Hayes and they agreed with my recommendation. Basically, we just want to make sure other pets and domestics are safe from any future harm and also that this doesn't ever move up a notch and take the life of a child or cause any physical harm to a child or adult. If you would agree to that I would be more than happy to go out to the home to make sure that what they do, if they do have the fence secured, they have obtained the muzzles and are using them in public along with the 3 foot leashes and that the signs are installed.

Councilor Brennick – How about the liability insurance.

Eileen Green – They do have to have the liability insurance, \$100,000 filed with the town clerk now.

Councilor Pinerio – I have a husky, they have a tendency to dig and get out. Is there anyway to secure that in case they can dig under the fence and get out.

Eileen Green – We already discussed that at times when these dogs have gotten out and we have discussed actually putting underground fencing when we had an incident back in December we talked about putting underground electronic fencing with the electronic collars within their stockade and chain link so the dogs would not be able to get to the main fence or main gate which are left open by other children and other adults. We did talk about that but the ground was not ready to be able to do that.

Councilor Pinerio – If there is another incident in the future what steps would you take with those dogs?

Eileen Green – I spoke with the owners of the dogs and I did tell them today that if the dogs are found to be loose, called in off leash and are impounded one more time that we would come back to the council and recommend having the dogs ordered out of town. If they kill and maim again we will talk about the animals being destroyed.

Councilor Thone – Where are the dogs right now are they with the owners?

Eileen Green – Yes

Councilor Thone – How are they currently restraining them are they in a fence?

Eileen Green – They do have a fence it is a fenced in yard. The issue of the dogs getting out always come back that someone leaves the gate open.

Councilor Thone – One of these dogs was the rabies vaccine lapsed on it?

Eileen Green – Yes, they just had them all done in the last 24 hours.

Councilor Thone – You said you felt they were fine with people but how many incidents have there been.

Eileen Green – Two with the cat.

Councilor Thone – But they have gotten out they've been impounded several times.

Eileen Green – We have never had an incident with human safety with these dogs and we have handled them at the pound and I have caught them on numerous occasions. They have always been fine. This is not a people issue with these dogs they are not aggressive to humans by any means I have never seen it with these dogs at all.

Councilor Thone – If the owners are here I would be interested in hearing any comments they might want to make.

John Perkins, 17 Sanborn Ter. – I have two huskies one ten years old and I have had her for 9 years and she has never been impounded. I have another one for four years and she has been picked up twice. I have three cats at home they don't bother the cats. To be quite honest I don't think my dogs did it. There is a dog that looks like mine in the neighborhood that comes after my cats and other neighbor's cats, people and nothing is being done. It happens daily, three or four times a week.

Councilor Pinierio – You just stated that the other dog has come after your dog and cat; did you complain to the dog officer about that.

John Perkins – There have been complaints, yes.

Councilor Pinierio – Has the dog officer come down and followed through?

John Perkins – I'm not sure.

Peter Hayes – Speaking on behalf of his father Frederick Hayes. In the story that followed a few days later Ms. Perkins did approach my father at his home in a gesture of apology. She did say that her dogs would never do such a thing and yet there have been other incidences where they run and maimed another cat. Also, I had sent a letter to the council. She stated that it wasn't her fault that a visitor was at her home and didn't shut the gate that evening. It was in the time that this all did occur. My Dad has never seen any other animals in his yard. He and his cats have lived there for over 13 years in their sanctuary, in their backyard without any problems or incidents occurring. There has never been any other animals in the yard. It was this incident that they were able to dig through the back of his fence and get on his private property and kills his cat that evening.

President Lawrence – Mr. Hayes are you satisfied with the recommendations?

Mr. Hayes – I am, speaking with Eileen at first when I heard that there were other occurrences and another cat being maimed, I was going to seek that the dogs be separated and at least taken from the home so they wouldn't run as a pack minded set. It seems to be something that they do, they seem to be looking to do something and I was going to seek the removal of the dogs or at least one from the home so that this would never occur again. I feel that Eileen has done a good job at bring this issue to you people and her recommendations I am comfortable with at this time.

Pete Kenney – They usually take pretty good care of the dogs as far as keeping them in the house. If they do get out they are right out there chasing them down. I live right across the street from them and there are quite a few dogs in the neighborhood that just wonder around the neighborhood all the time. There is a chocolate lab and another black and white dog, a border collie or something, a golden retriever, german shepherd and the german shepherd is usually accompanied by some other dog that is following it around too. There are a few dogs that are running around the neighborhood anyway. My cat has been attacked by the other dogs but it hasn't been attacked by the husky yet, I mean if it has been attacked it has been out of my sight. I have seen the other dog attack my cat and corner it. We basically just go out and scare the dog and it is gone. The dogs wander around on a regular basis not that they look like they got out, I think they are just let out. They use my lawn for a bathroom and stuff and I'm not real happy about that. That is not the case with their dog. They usually keep their dogs...when they get out they chase them down.

Councilor Pinierio – You say there are a lot of dogs in the neighborhood, have you called the dog officer to come down and look at the situation?

Peter Kenney – On one occasion; we had another dog and he would come over and would...our dog was on a runner and it would come over and aggravate him. It was more playful than anything else but our dog was going crazy because it was his territory. We called at one point and the dog disappeared for a while but then it has been regularly running around the neighborhood again.

Councilor Pinierio – What time of the day is this happening?

Peter Kenney – Ah, morning and afternoon. I have been home for quite a while all day long so I have been able to keep an eye on it and stuff so we have been able to see the dogs wander around the neighborhood on a regular basis.

Councilor Pinierio – Do the dogs running around have licenses on them?

Peter Kenney – I don't know. They really don't...other than chase the cat around occasionally and you know if I catch them in the yard I just basically scare them out of the yard. I haven't bothered to call other than that other dog that was bothering ours.

Councilor Pinierio – I just make a suggestion to you that every time that this is happening you should document it and call the dog officer that is her job. These other people letting their dogs run around, it shouldn't be that way. Some one of these days that dog is going to bite somebody. If you document that and give it to Eileen, I'm sure she will follow up on it and find out who these other people are.

President Lawrence – Basically I think what we would like, you to just go over once again because we have to make it in a motion of what you are requiring or requesting be done. That the dog owners...

Eileen Green – My request to the dog owners is that 1. These dogs are completely secured in 6 foot fencing be it chain link, be it stockade it is their choice. I want the dogs secured. Fencing that they can not dig out of, gates that are not left open that the responsible parties are the owners and that they will assure the council and the town that these dogs will stay contained. 2. That they place beware of dogs signs around the property, visible to the public towards the front of the house so that anybody coming up, walking by is aware that their dogs are there and they need to be aware that they may come out and cause them some harm. 3. If they are hand walk they are on a 3 foot leash and muzzled in public also they do have the insurance both dogs are licensed and now up to date on their vaccines and I want that kept up each year as they should. Basically it is to follow the vicious dog bylaw and make sure the dogs are contained.

Councilor Lavoie – Would 30 days be sufficient for the fencing?

Eileen Green – They told me today that they would be working on that this weekend. I think 30 days would be quite a long time actually. I think 15 days is enough time to get it adequately secured.

Councilor Benson – I move that the council vote the recommendation of the dog officer which is that the dogs are completely secured in 6' fencing that they can not dig out of and they stay gated, the beware of dogs signs be put up on the premises, that they are hand walked at all times on a 3' leash

and muzzled in public, that they carry valid insurance, that they are up to date on their vaccines and that all violation be paid within 15 days.

Councilor Pinierio seconded

Voted - Unanimous

Licenses and Permits

2006-035 Common Victualler License – J. Buck's Espresso & Wine Bar

President Lawrence reads 2006-035 into the record.

Jenny Buck states the concerns from the health and building inspection department have been addressed.

Councilor Brennick motions to grant the license on 2006-035. Councilor McClure second.

Voted – 7 Yes

2006-039 Pole Hearing – West Whitehall Road

President Lawrence reads 2006-039 into the record.

Cathey Beatie, Senior Business Specialist and Soma Soko, Engineer from National Grid – Ms. Beatie explains that the removal and placement of the utility poles is to accommodate Tuxbury Pond Campground's request for more electricity. National Grid and Verizon worked together and instead of just adding poles they surveyed the area and found a way to remove some poles and separate them in such a way that there won't be additional poles.

Dave St Sauveur, 4 West Whitehall Rd – Mr. St. Sauveur asks if there will be other supporting equipment on the poles. Soma Soko states they will not be adding anymore transformers just some guide and anchors. Cathy Beatie states that the campground will provide there own transformers inside the campground. Soma Soko explains that there will be some tree trimming. Councilor Lavoie asks if any trees will have to be cut down, Ms. Soko states it is a possibility. Councilor Lavoie asks whose permission you obtain for cutting down trees. Ms. Soko responds that their tree crews go out and asks permission of the home owners. Councilor Pinierio asks if the trees are on public property and if they are the tree board will have to be notified. Councilor Lavoie asks if a portion of Tuxbury Campground is in Amesbury. Ms. Soko believes part is in Amesbury and part in New Hampshire. *Councilor Pinierio motions to accept 2006-039 as proposed. Councilor Brennick second – Voted Unanimous*

2006-040 Pole Hearing – Main Street

Councilor Lawrence reads 2006-040 into the record.

Joseph Gleason, Right of Way Agent, Verizon New England – The petition is to replace an existing pole and move one pole approximately 4 feet. For the purposes of accommodating a customer because of a new home going into that location and the existing pole is in the center of the driveway.

John Grossi, 435 Main Street – Explains that the driveway was placed where the pole is because of the planning board for safety reasons.

Councilor Benson moves for approval of 2006-040 as submitted. Councilor Pinierio second. Voted – Unanimous

2006-041 Common Victualler Transfer – Hodgie’s Ice Cream

President Lawrence reads 2006-041 into the record.

Jason Regis, 21 Meadow Wood Road – Mr. Regis explains that he purchased the business and is requesting the transfer.

Councilor Benson moves for approval of 2006-041 as submitted. Councilor Pinierio second – Voted – Unanimous

2006-046 Auto Class I - Amesbury Chevrolet & Volkswagen

President Lawrence reads 2006-046 into the record.

Councilor Benson abstains from the vote.

Brian Fecteau – 18 Geremia St., Rye, NH – Mr. Fecteau explains this is a change of ownership.

Councilor Brennick motions to accept 2006-046. Councilor Pinierio second. Voted – Unanimous

2006-047 Auto Class II – Amesbury Chevrolet & Volkswagen

President Lawrence reads 2006-047 into the record

Brian Fecteau, 18 Geremia St., Rye, NH – Mr. Fecteau explains that Auto Class II is for used cars only and Auto I is for new and used so he decided to drop Auto Class II and is satisfied there isn't any need for both.

Councilor Brennick motions to withdraw bill 2006-047. Councilor Pinierio second. – Voted – 8 Yes, 1 Abstain (Benson).

Mayoral Appointments

2006-045 Joseph Sielicki – Cemetery Commission term to expire 6/30/06

President Lawrence reads 2006-045 into the record.

Joseph Sielicki, Pearl Street – Mr. Sielicki is interested in the history of Amesbury's cemeteries and would like to apply for grant monies to help improve the cemeteries. He also has relatives buried in Amesbury cemeteries.

Councilor Lavoie motions to approve 2006-045. Councilor Benson second – Voted – Unanimous

2006-044 Geoffrey Butler – Cemetery Commission term to expire 6/30/07

President Lawrence reads 2006-044 into the record.

Councilor Benson moves to approve 2006-044 as submitted. Councilor Pinierio second – Voted Unanimous

Second Readings

2006-034 A Request that the Municipal Council recognize the Amesbury Medical Reserve Corps – Mayor Kezer sponsor cont.

President Lawrence reads 2006-034 into the record.

Mayor Kezer states that 2006-034 is to recognize the Amesbury Medical Reserve Corps as special employees under MGL Chapter 258 in order to be exempt from liability. There are 58 people from the

medical profession who are going to be volunteers helping the community deal with health situations such as the bird flu. Mayor Kezer goes on to thank Terry Arsenault, Emergency Management, Richard Clark, Don Swenson, and Brian LaGrasse for taking the lead. He states the Town of Amesbury is taking the lead on a regional approach to coordinate, share resources and work together in order to be ready to deal with what ever health issues that may come our way.

Councilor McClure motions to accept 2006-034 as written, Councilor Benson second – Voted Unanimous

2006-021 Rules and Procedures Amendment to Rule 11-C Ad-Hoc Committees – Councilor Lindstrom sponsor cont.

President Lawrence reads 2006-021 into the record.

Councilor Lindstrom states that last December a workshop was put together by Councilor Lawrence to look at old rules and new rules. She feels it was very beneficial and should be part of the council rules and procedures. Councilor Lavoie reads the recommendation of Ordinance Committee. Councilor King thanks Councilor Lindstrom for sponsoring the bill and Brian Flanagan for re-writing 2006-021.

Councilor Benson moves for approval as amended by the Ordinance Committee as follows:

RULE 11C-1: Municipal Council Rules & Procedures Biennial Review

On a two year interval the Council President will appoint an ad-hoc committee whose purpose is to scrutinize the current Rules and Procedures, as defined below.

The appointment will be made in the first week of the final month of the current session, which typically will be the month of December of an election year.

The ad-hoc committee members will consist of the sitting council, and the council-elect.

The specific purpose of this committee will be to:

- 1. Explain the Rules and Procedures to the members of the incoming session.*
- 2. Review the current session rules, and formulate recommendations for the next session.*
- 3. Discuss any further actions needed by this committee.*

The committee will meet, as often as required to complete the stated purpose. The meetings will be held as a workshop environment, encouraging public input. The committee will dissolve upon completion of the stated purpose, or at the close of the current session, which ever comes first.

This committee will not make recommendations to the current session. The recommendations will be left for the newly elected session to adopt as their Rules and Procedures. Adoption will occur as detailed in Rule 1A.

Councilor Brennick second – Voted – Unanimous

Public Hearings

2006-013 An Act to Limit Use of Eminent Domain – Councilor Lindstrom, Brennick, McClure, Lawrence, Pinierio and Thone sponsor cont.

President Lawrence reads 2006-013 into the record.

Councilor Lavoie reads the recommendation of the Ordinance Committee. Councilor Lindstrom feels it is very important to pass 2006-013 whether or not there is any immanent danger in Amesbury the possibility exists. She feels everyone's property can be in danger of being taken for commercial development or at least development that will bring in more tax dollars. President Lawrence declares the public hearing open. Councilor Benson fully supports 2006-013. He agrees that taking private land for public uses is certainly not right at a very basic level. He also feels that just the threat of eminent domain is unfair bargaining; presenting an offer for land and if it is not accepted, take the land anyway. Councilor Pinierio agrees with Councilor Lindstrom. Councilor McClure feels it is absolutely absurd to take from a homeowner and give it to a private developer. She understands using blighted property for public use but to give it to a private developer is unacceptable in her eyes. Councilor Brennick wants to know if eminent domain can be used in the golden triangle. Councilor Benson feels the Town of Amesbury would have to have an EDIC which was proposed a couple of years ago and was not passed.

James Thieverge 11 ½ Sanborn Ter. – Mr. Thieverge applauds Councilor Lindstrom for sponsoring 2006-013 and supports it.

Councilor Thone fully supports 2006-013 and the effect it will have in preventing the abuse of eminent domain. She feels it is thorough, has checks and balances and she see other communities following in this path. Councilor Lavoie points out on the re-typed version that Councilor Lindstrom handed out on the 2nd page at the bottom of the page the word shall needs one more "I".

President Lawrence declares the public hearing closed.

Councilor Benson moves to approve 2006-013 as amended by the Ordinance Committee and Councilor Lavoie. Councilor Thone second – Voted – Unanimous

2006-033 A Request that the Municipal Council vote to adopt MGL Chap. 157, Section 1 & 2 pertaining to Veterans' Benefits – Mayor Kezer sponsor cont.

President Lawrence reads 2006-033 into the record.

Michael Basque states there was a detailed presentation at the Finance Committee and they recommended adoption.

Councilor Brennick states that the Finance Committee passed it unanimously.

President Lawrence declares the public hearing open and closes it.

Councilor Benson moves to adopt MGL Chapter 157, Section 1. Councilor McClure second – Voted Unanimous.

Councilor Benson moves to adopt MGL Chapter 157, Section 2. Councilor Pinierio second – Voted Unanimous.

2006-036 An Order to authorize the transfer of \$50,000 from Reserve for Unforeseen to Legal Services – Mayor Kezer sponsor cont.

President Lawrence reads 2006-036 into the record.

Councilor Brennick reads to Finance Committee recommendation – to take \$50,000 from free cash, Voted 3-2

Mayor Kezer states – We had a long good discussion with the Finance Committee on this matter. I know I have had various discussions with everybody on the Council relative to this issue. First, the fact that the legal budget as it stands now is funded at \$75,000. The demands on the line item for legal services, if you read in the Daily News, is that the need exceeds that here in Amesbury and I know Newburyport has been in the same situation in which that there are several issues before the town that require legal support for them. Part of it is sort of the day to day legal issues that come up to

the Mayor's Office on matters of ordinances, personnel issues, collective bargaining issues and so forth. In addition we have before us the issue of the South Hampton tax bill in which we have hired legal counsel in New Hampshire in order to do the research and go before the New Hampshire land tax board in order to defend off a tax bill that we have gotten from South Hampton. That is another example of what I said at the Finance Committee, for the tens of thousands of dollars that we spend here now for our legal services it will help prevent millions of dollars in future costs to the town. The other area which we are doing a lot of work on and which we have a lot of pressures coming to Amesbury is on 40B applications. I think there are more than 6 now before the town working with Joe Fahey. 40B's are complex issues with the zoning board and grappling with all those. The land that people are developing on is a lot more complex than the land others who have built houses and development here before; which raises a lot more legal issues than previously. The easily developed land is taken so each application before the ZBA on 40B's as well as other developments or projects before the Planning Board and others; they are getting more complex, there are a lot more legal issues. The basic message and, I think it was well received by the Finance Committee was, we need to spend the tens of thousands of dollars now to avoid millions of dollars of costs. In regard to where the funds should come from some of the members raised the issue we should try to find it in the budget. I submitted it as reserve and the Finance Committee went with free cash. The position I take in regard to this matter is that I am looking to take the funds either from reserve or from free cash rather than once again going back to the budget in order to fund this account. I think you are all aware that this has been a political football in the past and I hope we are beyond that issue. One of the things that I am trying to do in a fiscal sense is as you are probably aware, last month I stated that in order to develop the budget I am going to set the tax increase level for next year, which then determines our total revenues for the year. I am adding 1.5 million to the levy which equals \$263 on the average home for next year. That sets the bottom line spending for the town and as all the headlines you saw, 1.8 million is all the new money we have for next year. I told the schools that they can work off of the additional one million dollars of new money; the town will try to survive off of eight hundred thousand. The whole point of this is to try to instill fiscal discipline into the system by dictating total revenues first and then now as we build the budget we already have a bottom line and that will create discipline within the system as we try to hit that bottom line. The next step in the process for fiscal discipline that I am trying to do is more directed at this matter as to where we should take the funds. What I am trying to do is build, what I have been calling is, fiscal firewalls between different segments of the towns budget. First, at the beginning of the year when we set a budget and we tell our department heads, this is how much money you have to work with, make it happen, set the priorities, get it done. What tends to happen in municipal government is that when one part of the budget goes out of balance when something happens the tendency is to take it from somewhere else in the budget. By doing that it creates problems in other parts of the budget. Case in point, if anyone has been in this room and gone to the front left corner of this auditorium you will see a gaping hole in the floor, the floor is slopping off and if you get too close be careful because it might collapse. To me that is an example of years and years of just take it from somewhere in the budget. When we try to fill a hole in our legal budget as in this case and we are forced to take it from somewhere else it is building maintenance that gets under funded and road maintenance all these other programs that get under funded. Worse yet our department heads can't rely on developing programs in order to most effectively spend the money they have gotten. I'm pressing the case on this in that what I am hoping to do is build those fiscal firewalls. So that when one part of the budget goes out of balance we don't start tearing up other parts of the budget. In the long run giving our department heads a definite number that they can live with to do the programs, to do the long term planning and not be having to spend off all your money before it gets stolen from you it will bring in more fiscal soundness to the system. I am pressing that case as far as taking it from the reserve or free cash. I have with me a

letter, since I submitted the ordinance from taking it from the reserve and the recommendation of the free cash. In order for that to be done it has to be in agreement with the Mayor in order to make the change so I have a letter to be in line with the finance committee recommendation as far as free cash. The other issue I know for the members and talking with all of you is the issue of funding the stabilization fund. I will say to you now that that is a priority as I develop next years budget. Mike Basque and I are working on our fiscal policies. It is my intention to take an aggressive approach to really meeting the guidelines of the DOR in regard to stabilization funds and reserve funds. I know some of you have raised concerns about having money to put in the stabilization fund, I am committed to that. We are taking a much planned systematic approach to doing that, that information we will share with you in advance to come to a consensus what is the appropriate levels. I'm trying to head off some of the discussion that we have all had on this issue is that we need the \$50,000 in order to fund the legal budget to a level to protect our interests and to take it from reserve or free cash in order not to have to disrupt other programs. One other note on that – our snow and ice budget is at \$141,000 over spent right now. As you know, snow and ice is a line item that we are legally allowed to over spend. That money we are looking for within the budget we are not coming forward to ask for it from reserve or free cash. It is not going to be easy, that's why I have Mike Basque to do that. I am asking again for this to come out of reserve or free cash.

Councilor Thone – How much do we have in free cash?

Mayor Kezer - \$145,070

Councilor Thone – How much do we have in reserve?

Mayor Kezer - \$50,000

Councilor Thone – How much do we have in the capital fund.

Mayor Kezer – Well...

Councilor Thone – How much do we have now in our capital fund. How much do we have in the stabilization fund?

Mayor Kezer - \$180,000

Councilor Thone – A town of our size should have about two million I believe. With regard to these special revenue accounts, Mike, you were going to take a look at which accounts could be liquidated. Do we have a number on that?

Mike Basque – You would have to go over them individually. We presented that to the council.

Councilor Thone – Approximate

Mike Basque – Five to seven thousand

Councilor Thone – We are two months from the end of the year, do we have any estimate or idea of the free cash.

Mike Basque – No you will...

Councilor Thone – We have no clue where we are going to land.

Mike Basque – Free cash is a product of expenditures under your budgeted expenditures and revenues over...

Councilor Thone – Right, we are not at the beginning at the year, we are not at the half of the year we are two months away from the end and we have no idea.

Mike Basque – No and you absolutely won't until we close the books.

Councilor Thone – We had \$750,000 in free cash we've got now \$145,000 left we basically just blew through that money. I would support...there is no doubt that this has a lot of merit; I mean I know we need to spend this money we need to support these legal projects. I do have a major issue with where we are getting the money from. It's very easy to pick the money tree. I would support this if the transfer was coming from within the budget from another line item. I made a comment to you Mr. Mayor that we have left over money from the Aides salary and you said you spent that already on a band for the Santa Parade but that transfer never came before us.

Mayor Kezer – I have not spent all the money but, there are other bills that have come that were unexpected or different circumstances that we are looking for within the budget. The Aides salary is one possible area. As far as transfers, when the time comes to do all the various transfers then where ever we choose that one particular bill, we will present that to the council.

Councilor Thone – I would support this if the transfer was coming from within the budget but where it is coming from either free cash or reserve I will not support it.

Councilor Benson – I agree with you in terms of the need of this. I also agree that it is an appropriate account for this to come from. This account, reserve for unforeseen, I would rather see it come from this than free cash. It is for year to year overruns in the budget and that is what it is for. Typically what we have done is taken the fifty thousand and its been the only fifty thousand, I've been screaming until I have been blue in the face about this for quite a number of years and that has been the only money we have really seen go into the account. So, it has become another political football. I think a lot of the political football in terms of the legal budget, a lot of the air was deflated when the Mayor went out to bid because that was one of our big sticking points but unfortunately it became a football for another reason. In terms of the large amount of free cash that we had a lot of us, myself included last year, voted for the projects such as the communication center and furniture and the different items that came out of that free cash with the assurance from Mayor Hildt that the balance of that money which is this one hundred and forty that we are talking about would then be transferred into the stabilization fund, that never happened. I had sent you a message and asked you to submit a bill to that effect and I have not seen it. I see that you are taking a systematic approach to this. I have trusted, you will be the third Mayor now, to do this and have not to date seen it but I am going to give you the benefit of the doubt. You are new, it looks like you are approaching this with an intelligent mind set, so I would sincerely hope not to be burned a third time by a third Mayor and not have the money put into this account at the end of the year or have a substantial sum put into the account at the end of the year. I will vote in favor of this, another leap of faith. Fool me once shame on you, fool

me twice shame on me, fool me three times what does that mean. I will give you the benefit of the doubt.

Councilor King – I agree with Roger, I would prefer this to come from reserve for unforeseen that is why we have that line item. It is for unforeseen events like legal budgets. We can not control the law suits against this community and we would be foolish to step back and not support efforts to protect our selves from 40Bs and the other issues that Mayor Kezer had mentioned. I will vote in full support of this. From last year doing the budget, it is a very lean budget there is not a lot of wiggle room to go in and pull that kind of money especially if the Mayor is going in and finding the snow and ice budget there and finding other bills that have come in through there. I do not want to see road work in my neighborhood stopped. I do not want to see sidewalks not being repaired. I do not want to see roads stopped being overlaid. If you look into our budget we have 15% - money that we have that is not salary and benefits and it is not a big pot to pick from. Anytime you go into that the first place that usually gets hit is DPW and I am not willing to see that work stopped. I have to comment on something that Councilor Benson said regarding the stabilization fund. I do not believe and I brought this up at the last council that it is totally the Mayors' fault for not funding the stabilization fund. Many other Councils took free cash and put it against the tax rate which is a practice that is not supported by the DOR. If we calculated out at that time, if we had deposited that money that we put against the tax rate into the stabilization fund we would have almost two million dollars in our stabilization fund. To put all that responsibility on past Mayors just isn't fair.

President Lawrence – I would echo Councilor Thones comments on this. I thank the Mayor and understand the need for specialized legal counsel. I would however, knowing what happens at the end of every fiscal year the amount of transfers, the dollar amounts. That money does exist somewhere because we see it come back to us at the end of the year. We have hundreds of thousands of dollars in transfers so I would support the funding if we were able to find it in the budget. Mike, could the water department fund any of the legal bills for South Hampton?

Mike Basque – The Water Department...the only thing we have in there is \$127,000 which we use in general as a management assessment that goes from the water to the general. Could we pay the legal budget out of that; but then all you are going to do is shift it to the water users. I'd have to think about that, could it be done; possibly.

Councilor McClure – What did we have in free cash, one year back? At the end of the year what did we have left over?

Mike Basque – This year we had \$776,000 the year before we had \$173,000 and the year before that \$431,000 and the year before that a deficit. Free cash you can't project, you just can't because there are too many factors that go into it.

President Lawrence declares the public hearing open.

James Thieverge, 11 ½ Sanborn Ter. – Mr. Thieverge believes the transfer should come from reserve funds.

Councilor Lavoie – We have two unforeseen situations; we have ice and snow and legal bills. If I understood the Mayor correctly he is committed to find the money in the budget for the larger, by three times, out of the budget. The legal expense of \$50,000 he proposed first to take it out of reserve

which again conceptually, I think that is the appropriate place. The Finance Committee recommended free cash fine but, I think the point is there are two categories at least of unforeseen expenses. The Mayor is listening and saying snow and ice, we will take it from the budget. I wouldn't crucify the budget 100% to take both of these expenses out of it. To take it from some other place seems appropriate and logical.

Councilor Lindstrom – I understand that Mayor Kezer inherited the problem with the legal budget. It is not something he created. The way that our cheat sheet looks, it is not that we need to spend exactly \$50,000 it's just that's what were kind of looking for as a buffer. We don't have bills yet that total \$50,000.

Mayor Kezer – I would say in reality that we have more than \$50,000 in needs but we will limit it to that. With the \$50,000 I can program for the rest of the year with regard to what our actions will be relative to any...again we have heard the South Hampton case before the board up in New Hampshire. We are waiting for a decision. Depending on which way it goes, who ever loses they may want to appeal so that starts that commitment there. In regard to the 40B issue the strategy there is with all the 40B's before us we are trying to get out of the reactive mode of starting a process of getting into some situation and then having to have legal counsel help us find our way out is to have an attorney who specializes in 40B and will help us put together a strategy that gets it right from the first time. Helps us update our procedures in the approach that we take in part, to have a good clear process and also to send the message out to developers, if you come to Amesbury we have our act together in that regard. The demand is higher than \$50,000 but we will program based on the \$50,000.

Councilor Lindstrom – So the \$50,000, I understand you are going to spend it but, it is not spent.

Mayor Kezer – Right

Councilor Lindstrom – The other is the 40B lawyers that we retain for the specific purpose for 40B. The initial expense will be the big expense and once the system really gets rolling...then after that it will be expensive but not as expensive as the first time.

Mayor Kezer – Yes, again being proactive in regards to the legal issues on 40B's, we have a lot before us that is pending now. These things are requiring decisions, some within the next week or so, time is of the essence. It is not something we can wait until the new fiscal year to start that process because there are too many 40B's before the board requiring decisions.

Councilor Pinierio – Mike, if I recall the last two years we transferred a lot of money out of the water and sewer department at the end of the year.

Mike Basque – No, any transfers out of water and sewer went from one portion of water to another portion of water. Water and sewer stay totally separate. Last year the budget... we voted to transfer within sewer last year we had to transfer from surplus to the budget that was the only transfer we did. We did not do any water transfers last year. The previous year the budget was voted salary/expense/capital so we had to do transfers from salary to expense. It is always from water to water, sewer to sewer.

President Lawrence closes the public hearing.

Councilor Benson moves for approval of 2006-036 as submitted initially by the Mayor from Reserve for Unforeseen. Councilor Brennick - second. Roll Call Vote – 5 Yes, 4 No (McClure, Pinierio, Thone, Lawrence)

Councilor Benson moves to wave the 10:30 rule to take up new business. Councilor Lavoie second – Voted Unanimous

New Business

2006-037 An Ordinance to amend Rule #20 of the Municipal Council Rules and Procedures - Councilor Benson sponsor

President Lawrence reads 2006-037 into the record.

Councilor Benson moves to refer 2006-037 to the Ordinance Committee. Councilor Lindstrom second – Voted – Unanimous

2006-043 An Order that the Municipal Council accept a donation from the Amesbury Healthcare Charitable Trust in the amount of \$5,500.00

President Lawrence reads 2006-043 into the record

Councilor Lindstrom moves to refer 2006-043 to the Finance Committee. Councilor Brennick second – Voted – 8 Yes, 1 not present (Benson)

2006-048 An Act to Accept Ch. 40 Sec. 8i of MGL – Creation of an Energy Resources Commission – Councilor Lindstrom sponsor

President Lawrence reads 2006-048 into the record.

Councilor Lindstrom motions to refer 2006-048 to the Finance Committee and Ordinance. Councilor Benson second Voted – 8 Yes

Communication from Elected Officials, Boards and Commissions

2006-038 Stephen J. Buonomo – Application to Traffic and Transportation

President Lawrence reads 2006-048 into the record. Mr. Buonomo sent a letter stating he will not be able to attend.

Councilor Thone motions to accept. Councilor King second – Voted – Unanimous

Council Communications, Announcements and Committee Reports

Councilor Lavoie states the Ad-Hoc Committee regarding the position of the Town Clerk did meet. He sent out a report last Friday. Due to the late hour it is decided to wait until May 9th to discuss the report.

Councilor McClure states as a member of Amesbury Public Library Long Range Planning Committee there will be upcoming focus groups all through the month of May. Each member of the committee will meet with PTA, come to council meetings and go to the senior center to get the community involved with the library. A survey will be mailed soon and the survey will cover both programming for the library and the facility itself.

Councilor Lindstrom reports on the Education Sub Committee. Mr. Luz had a great report done on enrollment and it affected the out come of the schools enrollment. She states the meetings are well

attended and feels they are coming along nicely. Mr. Luz will be reporting to the Finance Committee regarding the School Budget.

Councilor Benson motions to adjourn, Councilor Thone second Voted – Unanimous
10:40PM

Respectfully Submitted,
Assistant Town Clerk